

REMARKS

Claims 1, 3-7 and 12 are now in the application. By this Amendment, claims 1 and 3-7 have been amended. Support for the amendment to claim 1 is found at least at page 1, lines 6-12, page 2, lines 25-26, page 3, lines 5-8, page 4, lines 18-28, and at Fig. 2 of Applicant's disclosure. No new matter has been added.

Claim 1 is objected to for containing a typographical error. Claim 1 has been amended as suggested in the Office Action.

Claims 3-7 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite in the use of the phrase "part-baking of the pastry dough is carried out for a period in the range of 30-70% of the normal total baking time of the pie piece." Claim 3 has been amended to recite a total baking time instead of a normal total baking time. In addition, Applicant respectfully submits that for a given recipe the total baking time is known. Thus, a skilled artisan can readily assess the scope of claim 3 for that recipe. Further, claims 3-7 have been amended to recite, "wherein" instead of "characterized in that" as suggested in the Office Action.

Claims 1, 3, 4 and 12 are rejected under 35 USC 103(a) as being unpatentable over US Patent No. 5,620,731 to McKee et al., in view of US Patent No. 6,365,210 to Schaible II et al.

The pending claims have been amended to more clearly recite making of an intermediate product for a pie, a quiche, or a tart, wherein the intermediate product has a pastry base with a peripheral edge to contain a substantial quantity of filling such as cream, flan or quiche filling, which, in the uncooked state, is liquid.

With such a pie, quiche, or tart, the claimed method is directed to a baking process in which, despite the presence of a large quantity of liquid filling, it is possible to obtain, after final baking, a pie, quiche or tart with a pastry which remains crisp. Please see page 1, lines 25-28, and page 2, lines 24-26, of Applicant's disclosure.

The applied citations relate to the making of pizzas. More particularly, McKee suggests, at col. 2, lines 52-57, a method for par-baking a pizza dough is such a way that, after final baking with a topping, a pizza is obtained which is similar to a pizza conventionally baked in one step from a raw dough with topping on it.

McKee refers to previously known two-step cooking methods as having the drawback of leading to doughs which are tougher, drier and crustier compared with doughs conventionally cooked (col. 1, lines 49-54). Thus, the object of McKee is to provide a method of par-baking a pizza dough so that it remains soft after final baking, which is the result always sought for a pizza.

McKee suggests par-baking the dough with a topping substitute which takes the place of the topping during the par-baking step and behaves like an actual topping. As suggested in col. 5, lines 21-29, it is critical that the topping substitute have a moisture vapour permeability corresponding to that of an actual topping and act as a moisture vapour barrier by “inhibiting the migration of moisture from the top of the dough.”

As set forth at col. 5, lines 40-55, McKee suggests that the topping substitute may be apertured if necessary to more precisely reproduce the moisture vapour permeability of an actual topping and also to avoid flapping on movement of the topping substitute during par-baking.

Schaible discusses McKee in detail at col. 4, line 24 to col. 7, line 5, including a detailed description of the drawbacks resulting from par-baking a pizza dough by itself (without topping on it), namely a tougher and drier product (col. 5, line 62 and col. 6, line 5-6).

Schaible shares the same concerns as McKee regarding par-baking of a pizza dough but wishes to avoid the labor costs associated with the use of the topping substitute of McKee (col. 6, line 61 to col. 7, line 5).

Instead of using a topping substitute, Schaible suggests hydrating the dough just before par-baking to cause moisture absorption and an increase in moisture content throughout the dough. Please see the abstract, col. 16, lines 24-32, and claim 13 in Schaible.

Thus, Schaible suggests increasing the water content of the dough to compensate for evaporation during par-baking so that a desirably soft pizza base is obtained after final baking despite par-baking without a topping.

Accordingly, McKee and Schaible suggest avoiding excess dehydration of a pizza dough during par-baking.

By contrast, in the claimed method, dehydration of the dough during par-baking has to take place so that when the par-baked dough is later exposed to a large quantity of liquid filling, it will not absorb too much moisture and will result in a crisp base in the final pie, quiche, or tart. As set forth at page 4, lines 25-30, the use of a mold and of a counter-mold makes it possible to maintain the base in the desired shape with an upstanding peripheral edge, the sides of the mold and counter-mold preventing the edge from falling off. Since a counter-mold is present for the above purpose, perforations have to be provided to allow for the desired dehydration.

Applicant respectfully submits that because McKee and Schaible have the objective of avoiding excessive dehydration during par-baking to allow a final soft pizza base to be obtained are contrary to promotion of dehydration during par-baking that is made possible in the claimed method to allow a final crisp pastry to be obtained, a person with ordinary skill in the art would not find guidance in McKee or Schaible leading to the combination of all claim features of independent claim 1.

It is also submitted that pizzas toppings represent a liquid amount far less than the fillings used for pies, quiches or pizzas. The cooking processes are therefore quite different. For example, McKee mentions a cooking time of 8 to 8.5 minutes for a pizza conventionally obtained with a topping and the raw dough and a time of 2 to 5 minutes for par-baking (col. 1, lines 43-48 and col. 3, lines 26-28). By contrast, as indicated in the examples in the present

application, par-baking of a dough for a quiche or a tart lasts about 20 minutes (page 7, lines 10-11 and page 8, lines 8-10) and the final baking lasts about 25 minutes (page 9, lines 1 and 29) or 30 minutes (page 10, line 11). This is a further illustration that baking pizzas, on the one side, and baking pies, quiches or tarts, on the other side, are completely different processes.

Moreover, McKee and Schaible are not combinable in the manner suggested because McKee teaches the use of a topping substitute 32 covering the dough with possible limited apertures 36 (as shown by Figure 1). Schaible requires impacting steam onto the exposed upper surface of the dough, with the steam treatment being sufficiently intense that moisture penetration occurs throughout the dough (col. 18, lines 55-62) and the pizza doughs travel through a steamer just before entering a conveyor oven (col. 16, lines 24-29 and col. 21, lines 7-12). Thus, McKee and Schaible exclude each other because Schaible requires that the upper surface of the pizza be exposed.

Claims 5-7 are rejected under 35 USC 103(a) as being unpatentable over McKee and Schaible and further in view of US Patent No. 5,256,432 to McDonald et al.

The Office Action relies on McDonald for suggesting a pizza topping disk for par baked dough. McDonald is not applied in a manner to cure the deficiencies of McKee and Schaible discussed above.

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

Applicant concurrently herewith submits the requisite fee for a Petition for a two-month Extension of Time. Applicant believes no additional fee is due with this response. However, if any such additional fee is due, please charge our Deposit Account No. 22-0185, under Order No. 22193-00007-US from which the undersigned is authorized to draw.

Dated: September 2, 2009

Respectfully submitted,

Electronic signature: /Georg M. Hasselmann/
Georg M. Hasselmann
Registration No.: 62,324
CONNOLLY BOVE LODGE & HUTZ LLP
1875 Eye Street, NW
Suite 1100
Washington, DC 20006
(202) 331-7111
(202) 293-6229 (Fax)
Attorney for Applicant